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## CONFIDENTIAL TELECOPY MESSAGE

TO: Examiner Arthur L. Corbin  
FROM: Russell D. Culbertson  
RE: Application Serial No. 09/833,866  
OUR FILE NO.: 317.1026

DATE: April 4, 2005  
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**MESSAGE:**

**RE: SERIAL NO. 09/833,866  
GROUP ART UNIT 1761**

**ATTACHED:  
APPELLANT'S REPLY BRIEF**

**PLEASE DELIVER TO  
EXAMINER ARTHUR L. CORBIN**

**IF THERE ARE ANY ADDITIONAL FEES DUE OR ANY UNDERPAYMENT OF FEES, THE DIRECTOR IS AUTHORIZED TO CHARGE ANY SUCH FEES TO DEPOSIT ACCOUNT NO. 50-3227 (Our File No. 317.1026).**

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Russell D. Culbertson, Reg. No. 32,124

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PATENT  
317,1026

1  
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3  
4 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
5 BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES  
6

7 In Re Application of: )  
8 Eldon Roth )  
9 ) Group Art Unit: 1761  
10 Serial No.: 09/833,866 )  
11 )  
12 Filed: April 12, 2001 ) Examiner: Arthur L. Corbin  
13 )  
14 FOR: pH ENHANCED MEAT )  
15 COMPOSITION AND METHOD FOR ) Facsimile No.: (703)872-9306  
16 PRODUCING A pH ENHANCED )  
17 MEAT COMPOSITION )

18 Mail Stop Appeal  
19 Brief - Patents  
20 Commissioner for Patents  
21 P.O. Box 1450  
22 Alexandria, Virginia 22313-1450

25 **APPELLANT'S REPLY BRIEF**

26 This paper is filed in response to the Examiner's Answer mailed February 4, 2005, in the  
27 appeal for the above-identified matter. Appellant submits this Reply Brief within the two-month  
28 period for response set in 37 C.F.R. §41.41(a)(1).

30 The Appellant's Brief filed November 22, 2004, fully addresses the errors in the Final  
31 Office Action mailed April 23, 2004, from which this Appeal is taken, and sets forth the reasons  
32 that the appealed claims are entitled to allowance. This reply to the Examiner's Answer is  
33 submitted to address statements in the Examiner's Answer relating to the teachings of the  
34 Japanese publication to Nakayama et al., and relating to the proposed combination of this  
35 Nakayama reference with U.S. Patent No. 5,871,795 to Roth.

## REMARKS

I. The Nakayama Reference and 795 Patent Cannot Be Combined Under 35 U.S.C. §103 As Proposed by The Examiner.

The Appellant asserts that it is improper to combine the Japanese publication to

Nakayama et al. ("Nakayama" or the "Nakayama reference") with U.S. Patent No. 5,871,795 to

Roth (the "795 patent") in the manner proposed by the Examiner in this case. The Examiner's

Answer to Appellant's Appeal Brief indicates at lines 11-13 of page 3 that the Nakayama

reference is relied upon for the concept of using ammonia gas and ammonium hydroxide

interchangeably in the treatment of comminuted meat. However, there is simply no teaching

suggestion in the Nakayama reference or elsewhere in the prior art for the broad concept that

ammonia gas and ammonium hydroxide may be used interchangeably in all treatments of

communited meat. Rather, the Nakayama reference simply teaches that an ammonium hydroxide

(aqueous ammonia) solution or ammonia gas may be applied to the surface of meats, including

commинuted meats, to reduce odors emanating from the surface of the meats. (The Nakayama

reference at page 3 of the English translation submitted in the IDS of January 23, 2002).

After stating that the Nakayama reference is cited for the broad concept that amino

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and ammonium hydroxide may be used interchangeably in the treatment of the polymer.

the Examiner's Answer goes on to conclude that the Nutley and Pechey's is therefore wrong.

analogous to, and properly combinable with, the 755 patient. However, the issue here is

whether Nakayama is analogous to the 1935 patent of Green which is of less priority and is

concomitant with the 735 patent under 35 U.S.C. §105. The issue is whether the 735 patent and

1 the Nakayama reference, as properly combined under 35 U.S.C. §103, teach or suggest each and  
2 every element set out in the present claims.

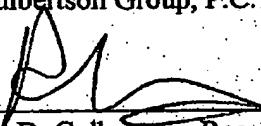
3 Taking Appellant's claim 1 as an example, the claim requires increasing the moisture  
4 content of a comminuted meat product and ultimately distributing an ammonium hydroxide  
5 solution throughout the meat product. The remaining independent claims include similar  
6 limitations as to increasing moisture content and distributing an ammonium hydroxide solution  
7 throughout the meat product. In order for the combination of the 795 patent and the Nakayama  
8 reference to meet these claim limitations, one must disregard the teaching in Nakayama that the  
9 ammonium hydroxide is applied to the surface of the meat product as discussed at the fourth full  
10 paragraph of page 3 of the reference, disregard the teaching as to gas pressure in the 795 patent at  
11 Col. 2, line 3 through Col. 3, line 3 and elsewhere, and substitute ammonium hydroxide solution  
12 for the treatment gas in the apparatus shown in Figure 2 of the 795 patent. However, as  
13 discussed above and in detail in the Appellant's Appeal Brief at pages 4-7, there is simply no  
14 teaching in the Nakayama reference, the 795 patent, or elsewhere in the prior art to combine the  
15 references in this way. Considering that there is no teaching, suggestion, or motivation in the  
16 prior art to combine the Nakayama reference and the 795 patent as proposed by the Examiner, the  
17 proposed combination can only represent an impermissible hindsight reconstruction of the  
18 Appellant's claimed invention.

1 II. Conclusion

2 For all of these reasons, the Appellant submits that claims 1, 3 through 20, and 22 are  
3 entitled to allowance, and respectfully requests that the Board reverse the decision of the  
4 Examiner rejecting these claims.

5  
6 Respectfully submitted,

7  
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